Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

REPLY COMMENTS OF NRTA AND OPASTCO

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The National Rural Telecom Association (NRTA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submit these joint reply comments in response to comments filed on or around August 21, 2001 in the above-captioned proceeding.[1] NRTA is an association of incumbent local exchange carriers (ILECs) that obtain financing under Rural Utilities Service (RUS) and Rural Telephone Bank (RTB) programs. OPASTCO is a trade association representing over 500 small ILECs serving rural areas of the United States. All of the members of both associations are rural telephone companies as defined in 47 U.S.C. §153(37).

I. INTRODUCTION

This proceeding proposes dramatic changes in the intercarrier compensation arrangements between and among carriers, looking towards a unified regime for most kinds of carriers and traffic. In their opening comments, NRTA and OPASTCO urged the Commission to act with great caution, and only <u>after</u> it both thoroughly evaluates the many unknown potential impacts and adopts effective mechanisms to prevent its proposals from thwarting the national policies of nationwide universal service and reasonable parity in the rates, services and advanced network capabilities available in rural and urban markets. The comments of other parties demonstrated that there are only a handful of supporters for the Commission's bill-and-keep proposals. Their justifications for mandatory bill-and-keep are far outweighed by the host of serious drawbacks and questions troubling the vast majority of commenters.

II. SUMMARY

The Commission's proposal to prescribe a bill-and-keep regime for all intercarrier compensation raises grave and varied procedural, legal, and factual concerns for most commenters. A number of parties showed that the NPRM is premature for many reasons, including the need to finish adopting and then to evaluate the results of the MAG, CALLS, CLEC access, ISP-bound traffic and other interim intercarrier compensation proceedings. These were adopted to provide a specified period of regulatory certainty and stability, which jumping ahead to what comes afterwards will destroy. Many comments also pointed out that the proposals have gotten ahead of fundamental requirements such as setting criteria for a new intercarrier compensation regime, developing a specific set of proposals in an open-ended, un-prejudged Notice of Inquiry proceeding, obtaining factual analysis of impacts, especially in rural markets, and increasing regulatory flexibility for incumbents that face increasing competition, as well as major changes in their revenue sources and end user rates from a bill-and-keep regime.

Parties that support moving to bill-and-keep offer little beyond parroting the problems the Commission said in the Notice will be solved by the drastic change to bill-and-keep it favors. These parties have ignored the relief provided by the recently-adopted interim changes, which resolve any urgent problems that previously made prompt interim action necessary. The record is also rich in showings of the need for adequate state participation and avoidance of preemption that would deeply compromise the statutory framework for interstate and intrastate authority.

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[1] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132 (rel. April 27, 2001) (Notice, NPRM).

Parties explain that, at a minimum, consultation with the separations and universal service joint boards is legally required. Other parties indicate that state involvement should be much more extensive than these necessary joint board referrals, given the positions of some participants that bill-and-keep must be prescribed for intrastate as well as interstate compensation arrangements and the unavoidable impacts on state as well as federal universal service responsibilities.

Commenters overwhelmingly agree that a bill-and-keep regime raises crucial questions about how to preserve and advance universal service under a plan that imposes most costs on end users. Sections 254 and 706 of the Act require affordable and reasonably comparable rates and services in rural and urban areas, geographic averaging of toll rates and nationwide access to advanced network capabilities. Relying solely on the guiding goal of efficiency will simply not achieve what Congress intended. Costs of the network must be shared because of the well-recognized value – or "external benefits" – that each subscriber's participation in the public switched network confers on all other subscribers. Commenters point out that fairness and avoiding rate shock should be goals and that timely countervailing measures must be put in place to prevent deaveraging, reduced investment or reduced service quality, especially in low-density, high-cost rural markets. NECA estimates that a bill-and-keep regime would shift $1.5 billion from interexchange carriers to end users, an average end-user impact of $9.80 per month, increasing to about $20 per month if intrastate bill-and-keep is imposed. The smallest companies and their customers will suffer the greatest impacts, with dual-jurisdictional monthly impacts up to $69 per end user. The comments plainly demonstrate that significant changes in existing universal service mechanisms would have to be in place and effective <u>before</u> the Commission could lawfully adopt a bill-and-keep plan.

The Commission's proposal to prescribe TELRIC if the current calling party's network pays (CPNP) regime remains in effect received its primary support from AT&T and a few parties that assume that TELRIC is already established policy. While the Commission adopted TELRIC for §251(b)(5) reciprocal compensation, most rural ILECs have agreements for such interconnections and have not needed state arbitration under the §252(d)(2)(A)(1) rules. Recently, the Commission's ISP-bound traffic decision required ILECs to apply the same rates to all §251(b)(5) traffic if they choose to transition their ISP-bound traffic compensation towards bill-and-keep. While the Commission adopted TELRIC in principle for price-cap ILECs access charges, that determination does not apply to rate-of return ILECs. Moreover, a court of appeals upheld a Commission decision not to prescribe TELRIC, in part because historic-cost-based rates are lawful under the Communications Act standards. TELRIC also applies to §251(c) arrangements, but most rural telephone companies remain exempt from that provision under §251(f)(1). Indeed, the Commission has never even held that rate-of-return carriers' access charges are unlawful, which is a prerequisite for prescribing different rates, and TELRIC is not necessary to deal with the problems the NPRM identifies. Even the lawfulness of the Commission's TELRIC model is before the Supreme Court, after an Eighth Circuit holding that a forward-looking cost methodology cannot lawfully be based on a hypothetical most-efficient network.

Finally, comments explain that a prescription of TELRIC would seriously threaten cost recovery for rate-of-return carriers and add to the regulatory uncertainty that is already discouraging investment in rural advanced network capabilities. Given the adverse consequences of a TELRIC prescription, the Commission also should refrain from using it as a tool to pressure carriers to agree to move to bill-and-keep, as it used the threat of cost studies and re-initialization to get unwilling price cap carriers to move to the CALLS plan.

III. THE RECORD DEMONSTRA.TES THAT THIS PROCEEDING IS PREMATURE

NRTA and OPASTCO pointed out in their opening comments (pp. 2-5) that this proceeding, proposing to substitute a radically different unified long-term paradigm for current intercarrier compensation arrangements, interrupts and jeopardizes the Commission's ongoing efforts to finish its interim access charge and intercarrier compensation reform efforts. At the same time that the Commission is working to create a period of regulatory certainty and stability that will enable rural carriers to invest in network upgrades, this proceeding interjects the prospect of changes that would frustrate the interim plans to provide stability for large segments of the industry. The stability threatened here was only recently established in the recent access decisions for price-cap[2] and rate-of-return[3] incumbent local exchange carriers (ILECs), as well as the decision on compensation for competitive local exchange carriers (CLECs)[4] and companies' providing end-user access to information service providers (ISPs)[5]. The fundamental changes proposed here would also confuse and interfere with the Commission's ongoing

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[2] *Access Charge Reform Price Cap Performance Review for Local Exchange Carriers, Sixth Report and Order*, 15 FCC Rcd 12962 (2000), *pets.f or review pending*, *sub.nom*. *Texas Office of Public Util. Counsel et al. v. FCC*, Nos. 00-060434 (and consolidated cases) (5th Cir. 2000) (CALLS Order)

[3] *News Release*, *FCC Adopts Order To Reform Interstate Access Charge System For Rural Carriers*, October 11, 2001, and *Summary of MAG Item* (October 11, 2001) (*together* MAG Decision Notice); *See*, *also*, *Federal-State Joint on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, FCC 01-57, CC Docket Nos. 96-45 and 00-256 (rel. May 23, 2001) (RTF Plan Order)

[4] *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, FCC 01-146, CC Docket No. 96-262 (rel. April 27, 2001) (CLEC Access Order).

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic,* FCC 01-131, CC Docket No. 96-98, CC Docket No. 99-68 (rel. April 27, 2001) (ISP Access Remand Order).

proceeding to provide regulatory alternatives for non-price cap ILECs that have heretofore not had feasible alternatives to traditional rate-of-return regulation.[6]

Numerous commenters agree that this proceeding is premature and threatens too many unknown impacts to go forward at this time. For, example, Focal Communications, cautions (pp. 2-5) that the proposals will not provide the regulatory certainty necessary to stimulate investment and the further development of competition. Mpower observes (pp. 2-10) that increasing convergence of technologies and providers has already led to significant changes, including recent access charge reforms. Consequently, it explains that now is not the time to add drastic regulatory changes to the existing uncertainties. Verizon (p.1) opposes major revisions of intercarrier compensation without thorough analysis of the impacts and ramifications. The Minnesota Independent Coalition (pp. 4, 8-10) warns particularly against adopting any proposal until its impacts on small LECs are known. Other comments make suggestions that further demonstrate that the Commission has not yet laid the foundation for evaluating a new scheme of regulation: For example, WorldCom (pp. 1-2) urges the Commission first to adopt criteria for evaluating various intercarrier compensation approaches, a necessary step that plainly should precede selection of a wholly new approach in regulating carrier-to-carrier arrangements.

A number of ILECs and their representatives (*see*, *e.g.* NTCA, pp. 1-2; NECA, p. 18 Western Alliance, pp. 28; Alltel, pp. ii-iii; CenturyTel, pp. 9; TCA, pp. 2-3) explain that the Commission must first complete its MAG proceeding for access and regulatory reform for rate-or-return- regulated ILECs (ROR carriers). If this proceeding overtakes the MAG proceeding's comprehensive review of related issues for these carriers, small and rural companies will not

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[6] *See*, MAG Decision Notice, Summary of MAG Item, *supra* – *Further Notice of Proposed Rulemaking* (adopted Oct. 11, 2001).

have even the interim measure of certainty and predictability provided to other segments of the industry by the recent access and interconnection reform decisions discussed above.

Some carriers (e.g., Alltel, pp. 13-14 and CenturyTel, pp. 17-18) also argue that further regulatory flexibility is necessary for these ILECs before the Commission embarks on designing a whole new approach. Indeed, the record supports the need for more than just finishing the interim reform process for rate-of-return ILECs. The Western Alliance (pp. iii, 28) and Parrish, Blessing (pp.iii, 19-20) urge that the CALLS plan should also be allowed to complete its course before the Commission moves forward towards replacing that regime. Moving to replace interim plans before their impacts have been observed in practice, let alone evaluated, dispenses with the "feedback cycle" that enables the Commission to judge how economic theories, justifications and predictions play out in the real world.

In another variation on the themes discussed above, the Illinois Commerce Commission (pp.5-6), and NECA (pp. 14-18) urge the Commission to issue more specific, more detailed and more targeted rulemaking proposals before it considers adoption of a bill-and-keep regime. In addition, ITTA (pp.21-22) proffers a laundry list of issues for examination in the course of any intercarrier compensation reform inquiry. Other comments call for analysis of various other issues, ranging as far as the implications of a new regime to the Alaska commission's earlier determinations to lift the rural carrier interconnection exemption for an Alaskan carrier (RCA, pp. 7), the need to settle incumbents' "legacy issues" (BellSouth pp. 4-5) and the effects of a bill-and-keep regime on NECA pooling and risk sharing (NRTA and OPASTCO, pp.16-17; Western Alliance at 10).

The NPRM recognizes (¶97) that the CALLS and MAG processes are underway, but the Commission (¶97) nevertheless jumps ahead to ask whether to apply bill-and-keep to all types of traffic at once, or whether the Commission could stagger its implementation of bill-and-keep regulation while its other decisions run their course. The carriers that support a unified bill-and-keep regime offer little to justify rushing immediately to bill-and-keep for access charges. Instead, supporters of bill-and-keep as a unified system basically just rehash the Commission's list of concerns under historically diverse arrangements, without showing why the recent interim plans for ISP-bound traffic and CLEC access charges aimed at remedying some of the same concerns, as well as the CALLS and MAG proceeding reforms, should not be in place and evaluated before further changes are made.

In short, the record is replete with persuasive challenges to the timing, content, procedural framework and jurisdictional and legal foundations for this proceeding. The Commission should dismiss the procedure and evaluate its interim decisions before looking at long term replacements. Even when the time comes to look beyond the next five years, moreover, the Commission should start from an open-ended NOI and wait until further changes are "ready for prime time" before proceeding to specific proposals.

IV. THE RECORD DEMONSTRATES THAT SIGNIFICANT STATE INPUT AND INVOLVEMENT WILL BE REQUIRED IF THE COMMISSION DECIDES TO MOVE FORWARD WITH A UNIFIED INTERCARRIER COMPENSATION REGIME

Many comments filed by state regulatory commissions (e.g., Wisconsin PSC, pp. 4-7; Florida PSC, pp. 1; California PUC, pp. 8-9; RCA pp. 4-9; MOPSC, pp. 3-4) and NARUC (pp.2-7), explain the need to preserve state authority over intrastate access and criticize the failure to use appropriate procedures to coordinate state and federal decision-making. For example, the Wisconsin PSC (pp.1-2) points out the statutory requirement to involve the universal service and separations joint boards in decisions that implicate their jurisdiction. Others raise the related concern, discussed in the next section, that the proceeding currently suffers from a troubling lack of recognition of the serious demands any bill-and-keep proposal would place on state, as well as federal, universal service mechanisms. NTCA explains (pp. 6-9) that the 1996 Act necessitates referral to a joint board, and the Texas PUC observes that bill-and-keep will affect many longstanding jurisdictional relationships that also necessitate referral to the separations joint board pursuant to §401(c).

NRTA and OPASTCO urged (pp. 5-7) that state involvement beyond these two joint boards is also necessary because requiring state implementation of a unified bill-and-keep regime would require broad preemption, far beyond the role and authority the federal statute confers on the universal service and separations joint boards. Unlike the framework for joint decision-making established in §§254, 151-52 and 401(c), the Commission has no statutory authority to make the final preemptive decision about intrastate access rules for any individual state in a joint board proceeding. Indeed, the optional joint board procedure available under §410(a) requires a group comprised of "a member, or of an equal number of members, as determined by the Commission, from each of the states in which the wire or radio communication affected by or involved in the proceeding takes place or is proposed" (emphasis added).

In keeping with the need for suitable comity, NARUC (p.1) opposes preemptive adoption of a unified intercarrier compensation scheme and demands adequate state input. The Florida PSC (p. 1)also believes that this FCC rulemaking proceeding should give way to a more "collaborative" state and federal process. More specifically, the Texas PUC recognizes the need for a deeper level of state involvement, proposing (p.16) that this Commission convene a working group with representatives of state and federal regulators, consumer advocates and industry representatives. The Missouri PSC (p. 4) also urges the use of a federal and state working group, in addition to the necessary Joint Board referrals. NRTA and OPASTCO explained that §410(b) even allows the Commission to hold "joint hearings" with affected states with regard to "the relationship between rate structures, accounts, charges, practices, classifications and regulations of carriers subject to the jurisdiction of such state commission and of the Commission." The extensive comments on jurisdiction support a conclusion that states should be involved in all parts of a bill-and-keep proceeding suggesting parallel intrastate changes -- and even in the consideration of CMRS interconnection with carriers subject to state jurisdiction.

V. COMMENTERS OVERWHELMINGLY AGREE THAT THE COMMISSION MUST CAREFULLY ANALYZE THE RURAL END-USER IMPACTS OF ANY NEW INTERCARRIER COMPENSATION REGIME AND HAVE IN PLACE A SUFFICIENT UNIVERSAL SERVICE MECHANISM THAT COMPLIES WITH THE LAW

An overwhelming number of commenters addressed the vital importance of ensuring that the universal service mandates and principles of the 1996 Act continue to be met in rural and high-cost areas as the Commission moves forward with intercarrier compensation reform. Specifically, the Commission is obligated under section 254 of the Act to ensure (1) that rates remain affordable, (2) that there is reasonable comparability between urban and rural rates, and (3) that toll rates are geographically averaged and integrated. To accomplish this, many commenters believe that efficiency cannot be the sole or paramount goal of intercarrier compensation policy.[7] At the very least, NRTA and OPASTCO urge the Commission not to sacrifice or ignore the Act's universal service directives in the name of economic efficiency. As the California PUC correctly states, "competing principles of fairness, maintaining affordability of telecommunications service for all, and avoiding rate shock to consumers must be heavily weighed and accounted for before theoretically 'economically rational' approaches to access

[7] *See, for example,* Texas PUC at 3, 6-7 ("Texas would strongly contend that an intercarrier compensation regime based solely upon pure economic efficiency is likely to be inconsistent with existing requirements in both federal and state law regarding reasonableness in pricing and compensation."); Missouri PSC at 3 ("Any compensation arrangement, whether a unified regime or not, should continue to promote universal service as required by 47 U.S.C. §254."); TCA at 4 ("If efficient deployment of network resources were the sole goal of telecommunications policymakers, customers in many high cost rural areas would simply not be provided any service."); Missouri Small Telephone Company Group at 6 ("Intercarrier compensation should also promote universal service, or, at the very least, do no harm to the universal availability of telecommunications services at affordable prices."). *See, also,* Verizon at 16; Michigan Exchange Carriers Association at 2-5, 7-8, 49; Oklahoma Rural Telephone Coalition at 7, 43; Minnesota Independent Coalition at 3; California PUC at 3-4; GVNW at 2; ITTA at 20; ACS of Anchorage at 8.

charges are seriously considered."[8] This means that sufficient and effective mechanisms that preserve and advance universal service must be implemented before or, at least, concurrently with any new intercarrier compensation system.

Numerous commenters discuss how a pure bill-and-keep regime would "deaverage" the majority of access and interconnection costs previously averaged nationwide by the interexchange carriers and require the end-user customers of rural carriers to bear the high cost of service on their own.[9] Absent sufficient countervailing mechanisms, this would defeat the intent of section 254(g)'s rate averaging and integration requirement and contravene section 254(b)(3)'s urban/rural rate comparability principle.

The Rural Task Force's White Paper 2, cited by several commenters,[10] documents the unique operational and market characteristics that cause rural ILECs to have significantly higher investments and operating expenses per subscriber than non-rural carriers. Intercarrier compensation policy must not impose the full cost of the local network on the end-user customers of these high-cost LECs. Through section 254, Congress codified into law the long accepted principle that "all parts of the network bring value to the entire network and thus all parties should pay for the average benefit of the network as a whole."[11] Thus, if the Commission

[8] California PUC at 4.

[9] *See, for example,* NECA at 5 ("Because per-subscriber costs in rural areas are significantly greater than costs in urban areas, an intercarrier compensation system that requires end users in high cost areas to bear the entire cost of 'their' networks must inevitably cause rates in rural areas to rise above rates in urban areas, in violation of section 254."); NTCA at 10-11 ("Because urban and rural costs are not comparable, under a strict bill and keep regime, urban and rural rates could not be comparable."); Oklahoma Rural Telephone Coalition at 43-44 ("The elimination of intercarrier compensation, and the imposition of bill-and-keep, would cause proportionately higher increases in the rates for rural carrier end users, than would be the case for a larger urban carrier and its end users."). *See also,* CenturyTel at 8; Qwest at 35; Missouri PSC at 3.

[10] *See* Western Alliance at 18-19, NTCA at 11, CenturyTel at 10, GVNW at 5-7.

[11] Home Telephone Company at 3.

moves forward with a bill-and-keep proposal, it must ensure that the high cost of rural networks can continue , in some manner, to be averaged and spread nationwide.

The authors of the Office of Plans and Policy (OPP) working papers Nos. 33 and 34 completely overlooks the importance of nationwide cost sharing in high-cost areas in their exclusive focus on efficiency. For example, DeGraba states that regulators need to focus on designing an efficient interconnection regime, which means that it should encourage consumers to make efficient use of the network while also encouraging efficient investment in, and deployment of, network infrastructure.[12] According to Atkinson/Barnekov, this efficiency is achieved by forcing networks to bear their own costs. [13] DeGraba asserts that "COBAK takes advantage of the forces of competition, where they exist, by requiring a carrier to recover all of its local access costs from its end users."[14] However, under a pure bill-and-keep regime, without any offsetting cost sharing mechanism, the most "efficient" use of the network in a high-cost area would be not to use it, and of course, with so few customers, the most "efficient" decision regarding investment in network infrastructure would be not to invest. [15] The market simply does not recognize the "external benefits" of nationwide subscription and availability in high-cost markets, which is why Congress enacted § 254 (b) (3).

Thus, NRTA and OPASTCO agree with the many commenters who stress that incentives for future investment in new and advanced services in rural areas depend on assurances of full

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[12] Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime* at p. 15, para. 47 (Federal Communications Commission, OPP Working Paper No. 33, Dec. 2000).

[13] Jay M. Atkinson & Christopher C. Barnekov, *A Competitively Neutral Approach to Network Interconnection* at p. 26, para. 75 (Federal Communications Commission, OPP Working Paper No. 34, Dec. 2000).

[14] DeGraba, p. 2, para. 4.

[15] *See* Michigan Exchange Carriers Association at 4 ("Bill-and-keep can be considered to result in inefficiency since it will limit the incentive to invest in the network, especially the rural network.").

cost recovery that <u>does not</u> rely entirely on rural end-user customers.[16] The Commission has previously recognized that rural customers are particularly vulnerable to not receiving timely access to advanced services through the operation of market forces alone.[17] Sections 254 and 706 of the 1996 Act, taken together, seek to ensure that rural customers have timely access to affordable advanced services that are reasonably comparable to the services and rates available in urban areas, even when the marketplace alone will neither drive the necessary investment nor provide reasonable, affordable and comparable rates. If rural carriers believe that they cannot profitably provide new and advanced services at end user rates that fully cover their stand-alone costs, then the necessary infrastructure investments will not be made. Furthermore, RICA accurately points out that cost recovery entirely through end-users thwarts not only universal service goals, but also competition because it would make it impossible for a rural CLEC to compete effectively against a large ILEC that retains the ability to average its costs with its low-cost customers.[18]

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[16] *See, for example,* Western Alliance at 2 ("If these investments must be recouped wholly or primarily via local service rates that many rural customers cannot afford, the resulting uncertainty will preclude many infrastructure investments from ever being made."); Oklahoma Rural Telephone Coalition at 43-44 ("The elimination of intercarrier compensation, and the imposition of bill-and-keep, would cause proportionately higher increases in the rates for rural carrier end users, than would be the case for a larger urban carrier and its end users. If the revenues are not replaced, the result will be a deterioration of the rural telecommunications network."); USTA at 23 ("In addition, current access revenue streams are used to invest in the infrastructure and to provide new and advanced services. The incentives to make such investments must be preserved and increased."); ACS of Anchorage at 7 ("Constitutional law as well as sound policy dictate that any change to a new intercarrier compensation regime must reflect appropriate mechanisms for protecting and encouraging private sector investment in infrastructure, past and future.").

[17] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Second Report, CC Docket No. 98-146, FCC 00-290 (rel. August 21, 2000), paras. 220-223.

[18] RICA at 9.

NECA has provided valuable data which indicate the universal service challenges the Commission will face if it decides to pursue a bill-and-keep regime for rural areas.[19] Specifically, NECA's analysis shows that, for rate-of-return-regulated LECs, moving from current mechanisms to a mandatory bill-and-keep regime for interstate services alone could shift more than $1.5 billion from interstate carriers to end- users and result in an average end-user impact of about $9.80 a month. If intrastate access charges were also replaced with a bill-and-keep mechanism, the total average end-user impact would be about $20 a month.

Of course, these figures are only averages. As NECA's comments explain, the end- user impacts would be far greater for the smaller and generally more rural companies. For example, for rate-of-return LECs with less than 500 lines, the total impact of an inter- and intrastate bill-and-keep regime would be about $69 per month per end-user. And, as the Western Alliance explains, the upper end of the range of local rate increases is more important than the average increase because a bill-and-keep regime would make the interstate access revenue pools administered by NECA far less viable.[20] Access charge pooling allows higher-cost and lower-cost companies to join together and bill averaged rates, share risks and avoid the expense of individual rate-setting. Without the NECA pools, the higher-cost carriers would be forced to increase their end-user rates to the levels necessary to recover their own costs.

It is the potential for prohibitive end-user rate increases that have led NRTA and OPASTCO, along with other commenters, to urge the Commission to adopt a mechanism that mitigates such impacts, prior to or concurrent with the adoption of any new intercarrier compensation regime.[21] While SBC attempts to argue that a universal service mechanism need

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[19] NECA at 5-6, Appendix I.

[20] Western Alliance at 10.

only ensure rate affordability,[22] the Commission is well aware that this is only one part of the statutory objectives enacted in § 254(b)(1), (b)(2), (b)(3), (g) and (i). Section 254 also provides, in addition to affordability, for rates in rural areas that are reasonably comparable to those charged in urban areas,[23] as well as for toll rate averaging and integration.[24] As some commenters have noted with concern, however, the present universal service mechanisms are not equipped to satisfy § 254 under a bill-and-keep regime.[25] Although substantial growth in USF has been a concern for the Commission in the past, it will need to find lawful ways to address the end-user rate impacts in the areas served by small, rural LECs before it adopts bill-and-keep or any other changes to the present intercarrier compensation system.

Finally, the Commission must not deem as acceptable even a slight drop in subscriber penetration, as it moves forward to adopt a more "economically efficient" intercarrier compensation regime. It must remember that when a subscriber drops off the network, it adversely impacts not only that individual but every other subscriber who remains on the

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[21] *See, for example*, USTA at 16 ("Changes in universal service must occur contemporaneously with changes in compensation arrangements to ensure that the requirements of the Act are met and customers in high cost areas are served."); Alltel at 11-12 ("In areas where end user recovery results in rates that are not affordable and reasonably comparable to those available in urban areas, universal service support will be required. The Commission must assure that appropriate mechanisms for assuring sufficient support are in place before exposing carriers to rate shocks that may accompany the proposed changes."); CenturyTel at 21 ("First, and foremost, [the Commission] must ensure that it creates sufficient additional universal service support to guarantee affordable end-user rates that are reasonably comparable to those in urban areas even in the face of reduced or eliminated IXC contributions to local loop, switching, and transport costs."); NECA at 11 ("No action should be taken to revise or reform intercarrier compensation methods without revising, at the same time, existing universal service mechanisms to assure continued affordability of service in rural, insular and high-cost areas.").

[22] SBC Communications at 23.

[23] 47 U.S.C. § 254 (b)(3).

[24] 47 U.S.C. § 254 (g).

[25] *See, for example*, USTA at 16 ("The current universal service support mechanism will not provide sufficient support for high cost areas under bill and keep."); Western Alliance at 24 ("The Commission's Universal Service Fund and Lifeline programs are not sufficient to offset or cushion the resulting rate shock."); RICA at 8 (For rural ILECs and CLECs, a very substantial increase in USF support would also be required to maintain rural local service rates comparable to urban rates because of the much higher costs of distribution."). *See also*, NARUC at 4, Regulatory Commission of Alaska at 4.

network as well.[26] While NRTA and OPASTCO do not reject out-of-hand the Commission's consideration of a bill-and-keep regime, it must recognize that "…adoption of a pure bill and keep arrangement without any modification presents a real threat to continued availability of universal service in rural high cost areas."[27] It is therefore essential that the Commission carefully analyze the end-user impacts of bill-and-keep -- or any other considered intercarrier compensation reform and implement mechanisms that will ensure both full cost recovery for rural LECs and the affordable and reasonably comparable rates for rural subscribers called for by §254.

VI. THE COMMISSION HAS NOT ADOPTED AND SHOULD NOT PRESCRIBE A TELRIC OR OTHER FORWARD-LOOKING ECONOMIC COST METHODOLOGY FOR ACCESS CHARGES FOR RATE-OF-RETURN ILECS OR TRAFFIC EXEMPT FROM §251(c)

Although the NPRM proposed a mandatory bill-and-keep compensation framework for all intercarrier compensation, it cast Total Element Long Run Incremental Cost (TELRIC) as the potential fall-back in case the Commission does not adopt a bill-and-keep regime. The Commission did not spell out a TELRIC proposal in any detail, perhaps because it thinks it has already adopted TELRIC or the concept of forward-looking economic cost pervasively in previous proceedings. Yet its proposal suggests that TELRIC applies to reciprocal compensation under §251(b) – and possibly even to non-price cap ILECs' pricing of access charges and charges for unbundled network elements (UNEs) under §251(c). The NPRM appears to regard the policy choice as already in place. The NPRM does not ask for – and the record does not

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[26] *See* Western Alliance at 16 ("The unique workings of network economics make every user's telephone service more valuable as the total number of users on the network increases, and less valuable as such number decreases."); Home Telephone Company at 5-6 ("The value of phone service grows geometrically with the number of subscribers. One phone is worthless, two phones allow one connection, three phones allow three connections, and four phones allow six connections etc. The more phones added to the network, the greater the value to each individual subscriber.").

contain – legal, factual or policy analysis of why TELRIC should apply to all kinds of carrier interconnections and to rural telephone companies.

Some commenters, such as AT&T (p. 3), appear to start from the assumption that the Commission has already adopted TELRIC in principle for ILECs' pricing of access under §201 and substantively for UNEs under §251(c), as well as for reciprocal compensation. The Illinois Commission urges (pp.12-13) this Commission to continue to use TELRIC for transport and termination, regardless of traffic flows (despite the requirement in §252(d)(2)(A)(1) for "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier"). It also argues (p.13) that the Commission should use the same forward-looking cost method it adopted for UNE costing and pricing because UNEs can be substituted for other interconnection methods. However, the Commission has not adopted sweeping, all-inclusive forward-looking economic cost (FLEC) policies for non-price cap ILECs.

A. The Commission and Commenters Give Excessive and Unjustified Weight to the Commission's Prescription of FLEC for Section 251(b)(5) Traffic

In summarizing where its cost methodology policy stands, the Commission first correctly reports that "in implementing the reciprocal compensation provisions of the 1996 Act, [it] determined that reciprocal compensation rates should be based on forward-looking economic costs."[28] That determination applied to all LECs because the rule was adopted pursuant to §251(b)(5) of the 1996 Act, which applies to all local exchange carriers. It is also true that the Commission looked to the §252(d)(2) pricing standards for state arbitration in connection with transport and termination when it also applied the FLEC approach to 251(c) traffic in §51.505 of

[27] Home Telephone Company at 2.

[28] NPRM, ¶99.

the Rules. However, the applicability of TELRIC pricing, even to reciprocal compensation arrangements for transport and termination, is not the established fact for rural telephone companies that the Commission and commenters such as the Illinois Commerce Commission (*see,* p. 13) and the Texas Counsel (p. 14) may assume. Particularly for rural carriers, reciprocal compensation arrangements have generally been negotiated by carriers, not set by state arbitration under the §252(d) standards. In any event, many §251(b) reciprocal compensation arrangements have now become subject to the Commission's recent order on compensation for ISP bound traffic.[29] That order allows an ILEC to phase its arrangements for ISP-bound traffic under reciprocal compensation towards bill-and-keep, but only if the carrier also offers to price all its other 251(b) traffic under the same phase-down.

B. The Commission Has Not Adopted and Need Not Adopt a TELRIC or FLEC Cost Methodology for ROR ILECs' Access Charges

The NPRM goes on to state that, "while interstate access charges had been based on historical costs (as modified by the Commission's price cap regime), the Commission in 1997 determined that access charges should likewise move to forward-looking economic costs."[30] AT&T argues strenuously (e.g., Argument I) for Commission prescription of forward-looking economic costs for access charge purposes.

While the Commission stated a policy that price-cap ILECs' access charges should move to FLEC in its 1997 access reform proceeding, non-price cap ILECs' access charges were expressly excluded from that proceeding, with limited exceptions not related to moving to

[29] ISP Acess Remand Order, ¶¶ 8, 89.

[30] NPRM, ¶ *99*

FLEC.[31] Even for price cap carriers, moreover, the Commission decided to rely first on market forces to lower access charges, rather than prescribing rates based on TELRIC. Indeed, the Commission successfully defended its decision not to prescribe TELRIC-based rates for price cap carriers' access charges in Southwestern Bell Telephone Co. v. FCC, 153 F3d 523**,** 544-59 (8th Cir. 1998) (Southwestern Bell) in the face of interexchange carriers' claims that a prescription of forward-looking cost was unlawfully withheld. That decision upheld the Commission's discretion not to prescribe forward-looking economic costs and to rely on market forces in the first instance. The court accepted the Commission's explanation that the price cap ILECs' rates, based on "historical costs rather than forward-looking costs, are permissible under the 'just and reasonable' standard prescribed by §201(b) of the Act."[32] The court also pointed out that the Commission need not prescribe FLEC-based rates even if it thought access charges needed to be reduced, but could lawfully "impose an alternative solution that effectively and permissibly reduced rates."[33] The court also noted that the Commission could "take the extreme action of prescribing rates only when … the rates currently charged are 'or will be in violation of any of the provisions of the Act.' 47 USC §205(a) (1994)."[34]

In the CALLS decision, the Commission again accepted non-prescribed rates for price cap ILECs, adopting negotiated access charge reductions rather than prescribing FLEC-based rates. It extended the period for reducing access charges by market forces even though, for the price-cap carriers, it had earlier stated that it would "eventually prescribe rates for those services

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[31] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, First Report and Order* (CC Docket Nos. 96-262, 94-1, 91-213, 95-72), FCC 97-158, 12 FCC Rcd 15982**,** ¶¶329-35 (rel. May 16, 1997).

[32] *Southwestern Bell* at 552-53.

[33] *Id. at 553-54.*

[34] *Id. at 550*

at forward-looking economic cost levels."[35] The Commission held and the court noted that a "a prescriptive plan would not be feasible," because of "the difficulty in creating a reliable forward-looking cost model for interstate access services."[36]

The Commission has never held that ROR ILECs' access rates are unlawful, much less determined that their access charges must be based on FLEC or TELRIC rather than the historical costs now in use. Even for universal service, where the Commission earlier declared that FLEC would apply in the future, the Rural Task Force (RTF) recently found that the Commission's forward-looking cost proxy model used to calculate high cost support for non-rural ILECs does not work for the diverse universe of rural carriers. The Commission followed the RTF recommendation in adopting an interim five-year mechanism, and rural high cost support continues to be based on historical costs.[37] While the Commission may not have given up on the notion of developing a FLEC model appropriate for these carriers for universal service purposes, that challenge remains unmet. Moreover, the Commission is well aware that retaining historic cost-based rates is lawful and can be a proper policy choice depending on the context and objectives. For example, it retained a historic cost basis for pole attachment pricing, in part, because that methodology "brings certainty to the regulatory process… [and] has provided a stable and certain regulatory framework, which may be applied 'simply and expeditiously' requiring 'a minimum of staff, paperwork and procedures consistent with fair and efficient regulation..., [while moving to FLEC would] necessitate a protracted rulemaking proceeding

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[35] *Id*., at 548. The Commission explained to the court that it was much more difficult to prescribe a forward-looking cost methodology for access charges than for calculating universal service support for non-rural ILECs.

[36] *Id*. , p.

[37] RTF Plan Order, ¶¶ 29-31.

involving complicated pricing investigations."[38] Similar considerations apply to non-price cap ILECs' cost determinations.

The need for certainty and stability and the difficulty of creating a reliable model are particularly acute for ROR ILECs, which face challenges in providing universal service to sparsely-populated areas and small customer bases.[39] Moreover, partly in response to the 5th Circuit's recent decision about the recovery of implicit support, the Commission has adopted a five-year plan to lower ROR ILECs' access charges.**[40]** It would be foolish to undermine the five years of stability and certainty the Commission sought to foster for ROR ILECs in that proceeding by immediately embarking on the difficult and burdensome rulemaking necessary to prescribe FLEC-based access charges for ROR ILECs. That process would, ironically, first require establishing that the access rates the Commission itself just set are not just and reasonable.

Thus, it is not necessary or appropriate to prescribe a FLEC methodology for any ILEC, let alone for ROR ILECs, to be "consistent with our decisions in the Local Competition Proceeding and the access charge reform proceeding …."[41] Small and rural ILECs' universal service and advanced network capability deployment challenges alone should prevent a prescription of TELRIC. Nor is the goal of uniformity of sufficient importance to justify augmenting the disruption (even if the Commission had legal authority) by forcing state public utility commissions to "move intrastate access charges to forward-looking-economic costs."[42]

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[38] *Alabama Cable Telecommunications Assoc., et al v. Alabama Power Company, Application for Review*, File No. PA 00-003, FCC 01-181, ___ FCC Rcd ____,¶70 (rel. May 25, 2001).

[39] *Rural Task Force, White Paper 2: The Rural Difference.*

[40] *See*, MAG Notice.

[41] NPRM, ¶ 99.

C. Most Rural Telephone Companies Are Exempt from §251(c) and the Associated TELRIC Pricing Policies

The Commission and most comments advocating prescription of TELRIC also fail to recognize that the Commission's adoption of a FLEC regime for §251(c) UNEs and interconnection does not apply to the majority of ROR carriers. The majority of such carriers qualify for the exemption under §251(f)(1) from the requirements of §251(c).[43] Beyond that, when the Commission adopted TELRIC pricing for UNEs and interconnection, it stated in each discussion that special treatment for small and rural ILECs was not necessary in the rules because "certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission."[44] Indeed, the Commission's original rules shifting the burden of proof and changing the standards for retaining the exemption to make it easier for a competitor to succeed in having section 251(c) applied have since failed to pass judicial muster, reinforcing the statutory safeguard from unwise application of TELRIC to exempt carriers.[45]

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42 *Ibid*.

43 The Michigan Exchange Carriers Association argues that free market pricing is best, but that TELRIC should provide a cost floor. The comments (p. 39) endorse the Michigan exception that allows rural carriers to tariff their interconnection charges to avoid costly negotiations.

44 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC 96-325, CC Docket No. 96-98 and CC Docket No. 95-185, 11 FCC Rcd 15499, ¶¶698 and 707 (1996)

45 *Iowa Utilities Bd. v. FCC*, 219 F.3d 744, 759-762 (8th Cir. 2000) (vacating subsections 51.405(a), (c), and (d) of the Commission's rules). Indeed, in *ACS of Alaska Inc., ACS of Fairbanks, Inc., and ACS of the Northland, Inc., Petition to Amend Section 51.405 of the Commission's Rules to Implement the Eighth Circuit's Decision in Iowa Utilities Board v. FCC Regarding the Burden of Proof in Rural Exemption Cases Under Section 251(f)(1) of the Communications Act*, DA 01-1951, CC Docket No. 96-98, 2001 FCC LEXIS 4628 (rel. Aug. 27, 2001), the Chief of the Commission's Common Carrier Bureau held *(¶7, footnotes omitted*) that a replacement rule is unnecessary because the court had made it clear that that rural telephone companies have an exemption "that is only terminated once a bona fide request is made, provided the request is not unduly economically burdensome, is technically feasible, and is consistent with § 254" and that " '[t]he plain meaning of the statute requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption."

D. The Record Does Not Establish A Need for a TELRIC Prescription to Deal with the Problems Raised in the NPRM

AT&T (pp.i-ii) and its economist apologists[46] contend that the Commission can solve all the problems of arbitrage and uneconomic incentives by prescribing TELRIC-based rates for access charges. As Janusz Ordover and Robert Willig put it (AT&T Appendix, p. 5), "it is the failure to require forward-looking, economic cost-based prices and not the architecture of CPNP, that facilitates regulatory arbitrage, the abuse of terminating access monopolies, and the other ills that the Notice identifies."[47] The Texas Public Utility Counsel (pp. 7-8) also urges the Commission to prescribe TELRIC for all intercarrier compensation. However, rather than explaining why such a prescription is appropriate, it simply assumes that TELRIC is the right method, even to the point of criticizing bill-and-keep because it conflicts with TELRIC.

Other comments do not share AT&T's view that a TELRIC prescription will be a panacea. The California PUC (pp. 9-10) suggests that, with respect to access charges, the "ills" the NPRM and AT&T identify have already been addressed. Hence, it questions the need for a TELRIC prescription, particularly since the Commission has yet to consider the rate design and end user rate impacts of such access charge changes. The California PUC explains (p. 10) that:

> The FCC has already taken steps to reduce access charges for price cap LECs and is contemplating changes for non-price cap LECs in the MAG proceeding. It has addressed terminating monopoly concerns in the CLEC Access Charge Order. Until it can be determined whether the resulting balance between intercarrier and end user rates works reasonably well, there is no clear need for further [CPNP] modifications such as the FCC is proposing.

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[46] *Declaration of Janusz A. Ordover and Robert D.Willig on behalf of AT&T Corp. (*attached as an Appendix to AT&T's comments) (AT&T Appendix).

[47] Even in advancing AT&T's position, the economists qualify their support for government-rate setting:

> We, recognize, of course that setting cost-based rates that replicate competitive market outcomes is not a simple task, and we are strong proponents of a first principle of economic regulation that such ratemaking should not even be attempted if markets and competition can be relied upon to accomplish these goals instead." *AT&T Appendix, p. 6.*

E. The Lawfulness and Efficacy of the Commission's TELRIC Rules Are Under Judicial Review

NTCA (pp. 4-5, 20-22) observes that the Commission's imposition of a TELRIC cost methodology is currently before the Supreme Court.[48] Under review there are the Eighth Circuit's decisions that costs may not be based on a hypothetical network, as the TELRIC rule requires,[49] and that there is no unconstitutional "taking" in departing from an embedded cost method. As NTCA points out, it would make more sense to defer a proceeding to extend TELRIC-based charges to more carriers and services until after the Court rules on the TELRIC issues. USTA, a party to the Supreme Court litigation, argues here (pp. 30-31) that TELRIC eliminates efficiency incentives and investment and hampers competition by preventing "full recovery of costs." Its comments observe (p. 31, fn. omitted) that Dr. Alfred Kahn has stated that "there [is] no logic in the TELRIC pricing plan and that it has inhibited the buildout of DSL." Since the Commission is looking at what to do <u>after</u> its interim reform periods expire, there is no reason not to await the Supreme Court's guidance.

Professor Kahn has explained in detail why a TELRIC cost methodology based on a hypothetical network does <u>not</u> reflect "the level to which effective competition would drive prices" or even allow recovery of a carrier's own incremental costs.[50] Prescribing rates set at TELRIC costs ignores the dynamic process that drives prices and investment in a competitive market. Dr. Kahn has also explained that measuring costs via TELRIC at the presumed level of

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[48] *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 758-59 (8th Cir. 2000), *cert. granted sub nom. Verizon Communications Corp. v. FCC*, 121 S.Ct. 877 (2001).

[49] 47 C.F.R. $51.303 (b) (1) cost measured for, "the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's were centers."

[50] A. Kahn, *Letting Go: Deregulating the Process of Deregulation*, pp. 89-96 (MSN Public Utilities Papers, 1998).

investment for a hypothetical new system designed with a "blank slate" (except for ILECs' wire center locations), would hold incumbents' cost recovery and prices far below what a real-world firm would require as its return and depreciation rates or prices to make that investment in a truly competitive market. Professor Kahn's conclusion is that "considerations of economic efficiency and efficient competition alone require that prices charged to competitors be based upon the LEC's actual costs."[51]

F. Prescribing TELRIC for Non-Price Cap ILECs' Access Charges Would Be Harmful for Rural Carriers, Their Customers and Their Network Modernization Efforts

NTCA (pp. 20-22) points to the recent factually-supported determination by the Rural Task Force that "the proxy cost model used by the Commission for non-rural carriers is inappropriate for rural carriers." NTCA continues to oppose the FCC's forward-looking economic cost methodology reflected in §51.505 of the Rules because it does not comport with the reality of ongoing network investment and evolution, which necessarily rely on business judgments. NTCA urges the Commission instead (p. 22) to pursue policies that "encourage rural LECs to continue to invest in rural areas rather than undermining their efforts with unproven theoretical concepts."

NECA (pp.18-19) opposes applying TELRIC pricing standards to access charges because of the adverse impacts. It explains that "[s]ubstitution of TELRIC pricing for current embedded cost-based rates could cause massive revenue shortfalls for carriers, especially those serving rural and high cost areas." None of the comments advocating TELRIC evidences awareness of this damaging impact, let alone offers a solution.

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[51] *Id. at* 94.

Small and rural ILECs are hampered in providing universal service and deploying a broadband-capable platform that is available to their more remote or isolated customers because they lack the economies of scale enjoyed by larger and denser urban-centered carriers. Typically, until they grow to a sufficient size or density, serving more customers and carrying increased traffic volumes help to build up their inherently limited economies of scale. Similarly, losing customers or traffic volume increases a small company's cost per customer. As long as "it is less costly for a single firm to serve the market than it is for two or more firms," Dr. John C. Panzar has explained that "marginal cost pricing will not allow the firm to cover its costs" when there are significant unexploited economies of scale."[52] He has also explained a carrier's need to obtain a "critical mass" of consumers to justify deployment of advanced service capabilities.[53]

Nevertheless, the Commission's TELRIC proxy model and any forward-looking cost methodology it has considered assume service to all area customers by a single carrier. Indeed, when the Commission's universal service proceeding specified criteria to be satisfied by any state or Commission cost methodology, one requirement was that:

> " The cost study or model must estimate the cost of providing service for all businesses and households within a geographic region… [including] multi-line business services, special access, private lines, and multiple residential lines… [which] will permit the cost study or model to reflect the economies of scale associated with the provision of these services.[54]

While the size and scope of the networks of the nation's largest carriers are such that competition may be feasible without an adverse impact on available economies of scale, the Commission has not established that this holds true for small and rural carriers. Indeed,

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[52] J.C. Panzar, *The Continuing Role of Franchise Monopoly in Rural Telephony*, pp. 7-9 (1987).

[53] J.C. Panzar, *The Economics of Telecommunications Infrastructure Enhancement*," pp.5-7, 9-10, 14-15 (1990).

[54] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, ¶250 (1997).

Congress recognized the different circumstances surrounding efficient service in rural markets in its provisions for specific state findings before a competitor may be subsidized in a rural carrier's area, in §214(e)(2),[55] and before a rural telephone company loses its §251(f)(1) exemption. Thus, while Congress adopted a nationwide preference for competition, it was plainly aware that the costs and benefits of government stimulation of entry could be significantly different in a small or rural carrier's service area. Consequently, before the Commission prescribes TELRIC pricing for rural carriers, it needs to develop a record and evaluate whether marginal-cost-based pricing will be insufficient to recover a serving carrier's costs.

G. The Commission Should Not Use the Threat of Prescribing TELRIC to Pressure ROR ILECs into Acquiescing in a Bill-and-Keep Regime

The NPRM clearly reveals the Commission's preference for a bill-and-keep regime. Thus, its questions about changes in the CPNP framework should it not adopt bill-and-keep as a substitute seem more like the kind of "choice" it offered to bring into line the price cap carriers that did not support CALLS. There the Commission offered carriers unwilling to "subscribe [at the holding-company level] to the CALLS Proposal for its full five-year term" the "alternative … to submit a cost study based on forward-looking economic costs, resulting in the LEC's rates being reinitialized to the appropriate level indicated by the study and then made subject to a price cap plan and X-factor that we would determine."[56] The non-CALLS option there is no different from the alternative here to support a bill-and-keep scheme or to submit, in effect, to the prescription of TELRIC-based access rates. However, the Commission should not try to force carriers to support bill-and-keep by threatening otherwise to prescribe TELRIC across-the-board

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[55] Without state evaluation of the impact of subsidizing more than one network in an area that cannot support a first network without support, the nationwide customers that ultimately pay for universal service support will have to bear more cost than is necessary for efficient universal service to customers in that area.

[56] CALLS Order, ¶¶59-60.

without the legally-required full consideration, evaluation and findings, especially for non-price cap ILECs.

VII. CONCLUSION

The comments filed in this proceeding proposing prescription of a radically different, "unified," "bill-and-keep" intercarrier compensation regime – or an alternative founded on a prescription of the TELRIC cost methodology – demonstrate that the Commission has far to go and much to do before it could adopt either proposal. In fact, the record indicates that it is even too early to be considering these drastic proposals for making regulatory changes after the period of stability and regulatory certainty the Commission has initiated in recent interim reform proceedings, since the proceeding itself destroys the crucial stability necessary for infrastructure investments. Fortunately, there is no pressing need to adopt policies for the long term now that the Commission has found interim solutions for the major intercarrier compensation problems it has identified. Consequently, NRTA and OPASTCO urge the Commission to dismiss or postpone this proceeding until the Commission:

(1) finishes formulating and implementing its interim access and universal service reform measures -- including resolution of the MAG plan access and incentive regulation issues -- and evaluates how the interim plans work;

(2) maintains the promised period of regulatory certainty and stability its interim policies heralded for carriers and customers;

(3) adopts a suitable framework for fully collaborative state and federal consideration of proposals that affect inter- and intrastate prices, which must go beyond the required separations and universal service joint boards; and, above all,

(4) fully investigates the impacts on end users and providers, particularly in low-density, high-cost rural areas, and puts in place effective universal service programs to counteract the adverse impacts of either adopting its bill-and-keep proposals or prescribing TELRIC-based pricing under a CPNP regime.

Respectfully submitted,

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